

ORIGINAL



0000013839

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission

DOCKETED

SEP 29 2004

DOCKETED BY

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 SEP 29 P 4: 51

RECEIVED

IN THE MATTER OF THE PETITION OF)
DIECA COMMUNICATIONS, INC., D/B/A)
COVAD COMMUNICATIONS COMPANY,)
FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT WITH)
QWEST CORPORATION)

Docket No. T-03632A-04-0425
T-01051B-04-0425

COVAD COMMUNICATION'S COMMENTS
ON THE FCC'S INTERIM RULES

DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"), through its undersigned counsel, hereby submits its Comments on the FCC's recently issued Interim Unbundling Rules and Notice of Proposed Rulemaking ("Interim Rules" and "Unbundling NPRM")¹ as they pertain to Covad's Petition for Arbitration in the above Docket.

Qwest urges on Page 4 of its Combined Reply to the Responses of Covad Communications and Commission Staff in Opposition to Qwest's Motion to Dismiss ("Qwest's Reply") that the Arizona Corporation Commission ("Commission") reject

¹ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 16978 (2003) ("TRO"), *aff'd in part and rev'd and vacated in part, United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II"); Order and Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004).

“Covad’s aggressive unbundling demands while the FCC formulates final unbundling rules.”² Qwest also argues that the Interim Rules create an increased likelihood of impermissible conflicts between Covad’s unbundling proposals and FCC’s impairment determinations and, therefore, any Commission finding on Covad’s proposed language regarding unbundled elements will be contrary to federal law.³

Covad emphatically disagrees. In short, it is Covad’s position that the Interim Rules do not effect Covad’s Petition for Arbitration whatsoever for the following three reasons: (1) the Interim Rules pertain only to those Section 251 UNEs that are not in dispute between Qwest and Covad in this Docket (switching, enterprise market loops, and dedicated transport); (2) even if those elements were in dispute in this Docket, Covad argues that it would not be necessary to provide a list of products no longer available under Section 251 because many of them are nevertheless available under Section 271 or state law⁴; and (3) it is premature to decide any matter based on the Interim Rules, as they are, by definition, interim in nature.⁵ Moreover, as set forth in Covad’s Response Brief (filed August 16, 2004), the Commission has authority to require unbundling of UNEs

² The FCC has expressed its intent to draft permanent unbundling rules “on an expedited basis,” perhaps by the end of the year. *Interim Rules* at ¶2.

³ Qwest’s Reply at Page 3.

⁴ To the extent any elements are truly no longer available (such as E-UDIT), their absence from the Proposed Interconnection Agreement should be sufficient to demonstrate that Qwest is not obligated to provide them. In addition, Covad maintains that Qwest continues to have obligations to provide network elements on an unbundled basis pursuant to Section 271 and state law. To label these elements as something other than “unbundled network elements” creates confusion and is semantically illogical. Further, there is no justification for excluding non-251 UNEs from negotiations. To do otherwise would require the Commission to create an entirely new regime to review agreements reached with respect to state unbundling obligations, if not Section 271.

⁵ As Qwest notes in its Reply, Qwest, along with Verizon and the United States Telecom Association, considers the Interim Rules to be unlawful and has filed a writ of mandamus on that basis with the D.C. Circuit.

Original and 15 copies filed this 29th day
of September 2004 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered
this 29th day of September, 2004 to:

Dwight Nodes, Esq.
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Maureen Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing mailed
this 29th day of September, 2004 to:

Timothy Berg, Esq.
Theresa Dwyer, Esq.
Fennemore Craig
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012

Winslow B. Waxler, Esq
Qwest Services Corporation
1005 17th Street, Suite 200
Denver, Colorado 80209


Norman G. Curtright
Corporate Counsel
Qwest Corporation
1801 California, Suite 4900
Denver, Colorado 80202

pursuant to Section 271 and state law, and that authority is not affected by the Interim Rules.

For the above-stated reasons, Covad strongly urges that this Commission proceed to arbitration in this Docket and to decide all disputed matters pertaining to the parties' proposed language in the Interconnection Agreement at issue.

Respectfully submitted, this 29th day of September, 2004.

**DIECA Communications, Inc. dba
Covad Communications Company**

By 
Michael W. Patten
Roshka Heyman & DeWulf, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

and

Karen Shoresman Frame
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, Colorado 80230
Phone: 720-208-1069
Fax: 720-208-3350
Email: kframe@covad.com

Attorneys for DIECA Communications,
Inc., d/b/a Covad Communications
Company

John Devaney
Perkins Coie, LLP
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005

By Mary Spolito